

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
ABERDEEN DIVISION**

**PATRICK DANIEL SHUMAKER AND  
PATRICK LEONEL SHUMAKER**

**PLAINTIFFS**

**v.**

**CIVIL ACTION NO. 1:23-CV-4-SA-DAS**

**CHRISTOPHER GRAHAM,  
MISSISSIPPI DEPARTMENT OF REVENUE AND  
OWNER AND OPERATOR OF OKAY FOODS**

**DEFENDANTS**

**ORDER DENYING MOTION FOR ENTRY OF DEFAULT  
AND DIRECTING SERVICE OF PROCESS**

The plaintiffs filed their *pro se* Complaint on January 4, 2023 and contemporaneously moved to proceed *in forma pauperis*. Docket 1, 2. The court granted the plaintiffs' motion to proceed *in forma pauperis* and directed the Clerk of Court to issue process for OKAY FOODS at 928 Ruffin Road, Columbus, Mississippi, 39701. Docket 4. The Process Receipt and Return certified that the U.S. Marshal Service was unable to locate OKAY FOODS with the remark "this is a private residence." Docket 13. Because the U.S. Marshal Service was unable to complete service at 928 Ruffin Road, Columbus, Mississippi, 39701, the court ordered the plaintiffs to clarify the identity of the defendant "Owner and Operator of OKAY FOODS"<sup>1</sup> and further provide the court with a valid physical address for service of process. Docket 14.

The plaintiffs responded to the show cause order with a filing titled "Motion to Add Physical Address of Owner Operator of Okay Food to Record and Notify the Court Owner Operator Received a Copy of Complaint and Motion of TRO via UPS." Docket 15. The filing identifies "Owners and Operator of OKAY FOODS" at 1801 7th Avenue North, Columbus, MS,

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<sup>1</sup> While the style of the Complaint identifies "Owner and Operator of OK FOOD located at 1801 7th Avenue North, Columbus, MS 39701," the section identifying "Additional Defendants" lists "Owner and Operator at 1801 7th Avenue North, Columbus, MS 39701" and "OKAY FOODS 928 Ruffin Road, Columbus, MS 39701." Docket 1.

39701 and includes a UPS label and receipt with a purported “Proof of Delivery” at said address. Docket 15. Despite no valid proof of service on the “Owner and Operator of OKAY FOODS,” the plaintiffs have now moved for Entry of Default providing an affidavit stating “[t]he Plaintiffs sent copies of all legal proceedings to the Defendant (Owner and Operator of Okay Foods) through UPS” and asserting that an answer was not timely filed. Docket 19-1.

The plaintiffs’ purported mailing of the Complaint and Motion for Temporary Restraining Order to “Owner and Operator of OK FOODS” via UPS is insufficient to perfect service of process. Federal Rule of Civil Procedure 4 provides “a summons must be served with a copy of the complaint” and further provides service may be accomplished by

- (1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or
- (2) doing any of the following:
  - (A) delivering a copy of the summons and of the complaint to the individual personally;
  - (B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or
  - (C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

Federal Rules of Civil Procedure 4(c)(1) and (e).

The Docket reflects that a summons was never issued for “Owner and Operator of OKAY FOODS” at the address identified in the plaintiffs’ response to the court’s show cause order, and it follows that no valid proof of service has been filed. Accordingly, the “Owner and Operator of OKAY FOODS” has not failed to answer the Complaint because the Complaint has not been properly served. For these reasons, the plaintiffs’ Motion for Entry of Default is **DENIED**.

However, in light of the plaintiffs’ response to the court’s show cause order identifying “Owner and Operator of OKAY FOODS” as the intended named defendant in this action and

providing a physical address, the Clerk of Court is directed to issue process for “Owner and Operator of OKAY FOODS” at 1801 7th Avenue North, Columbus, MS, 39701, which the U.S. Marshal must serve in accordance with 28 U.S.C. § 1915(d). The U.S. Marshal Service will serve process on this defendant under 28 U.S.C. § 1915(d) using good faith efforts to identify and locate the proper entity and obtain service by all approved means as provided by FED.R.CIV.P. 4 and MISS.R.CIV.P. 4 if service by mail is unsuccessful.

**SO ORDERED**, this the 29th day of March, 2023.

/s/ Sharion Aycock

**UNITED STATES DISTRICT JUDGE**